



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I

J.F. KENNEDY FEDERAL BUILDING, BOSTON, MASSACHUSETTS 02203-2211

Site: <u>Bennington</u>
Break: <u>11.9</u>
Other: _____

February 16, 1995

**CERTIFIED MAIL -
RETURN RECEIPT REQUESTED**

David P. Rosenblatt, PRP Coalition Counsel
Burns & Levinson
125 Summer Street
Boston, MA 02110-1624

and Listed Addressees

Re: Bennington Landfill Superfund Site

Dear Bennington Superfund Site PRPs:

Enclosed please find an evidence summary and supporting documentation compiled by the EPA describing your (or your company's) connection to the above-referenced Superfund¹ site located in Bennington, Vermont ("Bennington Landfill" or "Site"). Note that, with this letter, the EPA is issuing each active Potentially Responsible Party ("PRP") to whom a general notice letter has been issued (either in March, 1991 or November, 1994) an evidence summary which describes its specific connection to the Site. The EPA is also issuing this letter along with a complete copy of all evidence summaries and supporting documentation for all PRPs who have received general notice to Mr. David P. Rosenblatt, counsel for the PRP Coalition. Accordingly, if you wish to review evidence pertaining to any other party associated with this matter, you should arrange such review through the Coalition group.

Please note that as a discretionary matter the EPA is releasing its interview summaries along with other documentary information concerning the PRPs.² We have reviewed such witness statements and removed all information which reveals the identity of the witnesses interviewed as well as any notes by the investigators concerning their general impressions of the witnesses. The investigator impressions were removed because they fall within the work product and attorney/client communications privileges and are, therefore, not appropriately released. We are not disclosing the identity of the witnesses in order to protect them from potential harassment, and to protect the integrity of their

¹ Comprehensive Environmental Response, Compensation, and Liability Act or "CERCLA," 42 U.S.C. § 9601 et seq.

² Witness statements provided to the EPA by the PRP Coalition are not included herein but should be obtained directly from the Coalition counsel, Mr. Rosenblatt.



testimony. Based on past experience, some such witnesses, particularly those who are elderly, in poor health or otherwise frail, have been confused or harassed by intensive questioning conducted by investigators and others representing private parties. At this Site, where there are multiple PRPs, witnesses are likely to face numerous requests for interviews and follow-up interviews over a long period of time. As a result, their lives may be significantly disrupted, and these witnesses may ultimately become less cooperative with all parties, including the government. This is of particular concern to us as such intensive questioning could substantially interfere with EPA's enforcement of this case.

If you have specific questions or concerns regarding the evidence summaries or supporting documentation, the EPA is willing to meet to discuss those issues with you. To arrange a time to meet, you should contact me at 617-573-5768, or have your attorney contact Hugh W. Martinez, Senior Assistant Regional Counsel, at 617-565-4526.

In addition to the issuance of the above-referenced evidence, in light of the events scheduled to occur over the next several months relative to this matter, I have included additional information in this letter. You should review this letter carefully. To best protect your own interests, the EPA strongly recommends your early and active participation in this case — including participation in the PRP Coalition process. You should not assume that inaction now will serve to protect your interests in the future or that such approach will help you to avoid future legal action by the EPA. In fact, the opposite is more accurate in that a failure to participate in this process early on likely will produce adverse consequences later.

Background and Current Status: The EPA has documented the release and threatened release of hazardous substances, pollutants and contaminants at the Bennington Landfill. As you probably are aware, the Site was placed on the National Priorities List on March 31, 1989. Since that time, a substantial amount of information has been collected through a formal remedial investigation/feasibility study ("RI/FS") initiated in July 1991. Based on preliminary results of the RI/FS, on January 27, 1994 EPA-New England approved the commencement of an Engineering Evaluation/Cost Analysis ("EE/CA") to assess various options for controlling and containing the source of contamination at the Site. As a result of the EE/CA process, on December 23, 1994, the EPA approved a Request for a Non-Time-Critical Removal Action ("NTCRA") at the Bennington Landfill. A brief summary of the NTCRA is provided below. Consistent with the EPA's Superfund Accelerated Cleanup Model, the NTCRA will ensure a timely response to effectively minimize human and environmental threats which may result from the

continuing release or threat of release of hazardous substances from the Site.

The Non-Time-Critical Removal Action: The NTCRA consists of implementing specific source control measures including a composite barrier cap with drainage controls, cap maintenance, excavation and consolidation of soils and sediments, leachate collection, upgradient groundwater isolation, gas management, and site management and institutional controls. The estimated cost of the NTCRA is \$9,713,274, including EPA costs. Although the NTCRA will accelerate the overall cleanup of the Site by containing and reducing contamination, it does not constitute a complete cleanup plan. In essence, the NTCRA is designed to address the short-term problem of containing and reducing the source of contamination at the Site. The overall goals of the NTCRA are to minimize the migration of contaminants to groundwater, to ensure that landfill gas emissions are adequately collected and controlled, and to prevent direct human contact with contaminated soil or waste material within the Landfill and the drainage pond area.

The EPA anticipates that the NTCRA will be performed and funded by the PRPs under the EPA oversight pursuant to an Administrative Order by Consent. At this time, the Agency expects to send out special notice letters during the Spring of 1995 and to begin negotiations to achieve a settlement between the EPA and the PRPs for this Site. Among other things, the special notice letters will contain a formal demand for reimbursement of costs and interest that have been incurred and that are expected to be incurred in response to the environmental problems at the Site. The special notice letters will trigger a 60 day moratorium on certain EPA response activities at the Site, during which time the PRPs, through the Coalition, will be invited to participate in formal negotiations with the EPA. The special notice letter will encourage you to participate in negotiating a voluntary settlement that will have the PRPs conduct or finance the response activities required at the Site. Under statutory special notice procedures, the 60 day negotiation period may be extended for an additional 60 days if the PRPs provide the EPA with a good faith offer to conduct or finance the NTCRA.

If settlement is reached between the EPA and the PRPs within the 60 day (or 120 day) negotiation period, the settlement will be embodied in an Administrative Order by Consent to be filed with the EPA-New England Regional Hearing Clerk. On or before completion of the negotiations, design of the NTCRA will begin so that construction of the composite barrier cap can start in the Fall of 1995 and be completed within one year.

Please understand that if such agreement cannot be reached, the government will consider other options designed to ensure that the necessary work is completed. Such options are likely to be viewed as less attractive to the PRPs. These include the EPA conducting the work itself without the PRPs and initiating a subsequent legal action to recover the costs of cleanup from the PRPs or the EPA issuing a unilateral order to the PRPs to carry out the work. Under the terms of a unilateral order, any failure to comply would result in an assessment of triple costs against the PRPs.

Long-term Remediation: Later this Summer, the EPA will select a final remedial action for this Site in a Record of Decision ("ROD"). Through the ROD, the EPA will define the levels of contaminant reduction necessary for long-term public health and environmental protection and steps necessary, if any, to address restoration of the contaminated groundwater will be defined.

Volumetric Analysis: At this time, the EPA is encouraging the PRPs to conduct a volumetric analysis with respect to the Site. The Agency also is willing to provide reasonable, limited assistance in this effort provided the analysis is well controlled,³ subject to clear deadlines, and conducted in light of all applicable statutory and regulatory requirements, as well as relevant EPA policy and guidance. Toward this end, the EPA likely would be able to fund the services of a convener who would help determine whether a mediator or allocator is needed for the volumetric work at the Site and, if so, select the best candidate for conducting such analytical work.

Based on recent contact with Mr. Rosenblatt, common counsel for the PRP Coalition, there appears to be some willingness on the part of the PRPs to complete this analysis. However, should the PRPs fail to complete such analysis in a timely manner consistent with the schedule set forth in this letter, the government is prepared to undertake that work and recover the costs of such analysis from the PRPs at a later date. **In the interest of achieving further progress with respect to this matter, the EPA must receive a commitment to accomplish the volumetric analysis within two weeks of receipt of this correspondence.** If a commitment is not received by that time the government will conduct that work without direct involvement by the PRPs and apply the results accordingly.

Early Settlement with De Minimis Parties: Under Section 122 of Superfund, the EPA may enter into de minimis settlements whenever practicable and in the public interest. With respect to the

³ Appropriate controls would include, for example, reasonable, explicit assumptions used in the volumetric analysis.

Bennington Landfill, the EPA is interested in exploring the possibility of a de minimis settlement early in the NTCRA process. Early de minimis settlements allow parties who contributed minor amounts of hazardous substances to a site — both in terms of volume and toxicity — to resolve their liability early in the response process. Such settlements promote efficient case management and reduce the number of parties with which to negotiate performance of future response actions. By reducing transaction costs, providing the EPA with reimbursement of past costs and/or monies for future costs, the EPA as well as PRPs (both de minimis and non-de minimis) should benefit.

Although the EPA cannot anticipate the eventual results of a volumetric analysis, it is conceivable that such early de minimis settlement could be a part of this case so that an agreement — through an administrative order by consent — to fund the work specified under the NTCRA will include both de minimis and non-de minimis parties. To the extent de minimis parties are identified with respect to the Bennington Landfill, the EPA expects to conduct outreach to such parties to clarify the process as much as possible and, to the extent feasible, assist them in participating in the Superfund process more effectively. Toward this end, the EPA is willing to conduct a meeting at some future date specifically targeted at smaller parties or contributors to respond to questions concerning the materials accompanying this letter or any other aspect of this action. However, note that the EPA's interests may not be consistent with your own and because your actions in the context of this matter have legal consequences, you may wish to retain legal counsel (although retaining the services of a lawyer is not required). Any party which has issues pertaining to its potential status as a de minimis party or small contributor should contact me at 617-573-5768, or have your attorney contact Hugh W. Martinez at 617-565-4526.

Ability to Pay: The EPA is willing to consider legitimate and relevant claims concerning inability to pay. However, any such claims must be fully explained and substantiated by the party asserting them. The Agency will consider such claims only after appropriate documentation is provided in support thereof. Specifically, to consider any party's claim of inability to pay, at a minimum, the EPA must receive federal tax returns (with any and all schedules attached) for the latest three to five years for analysis by the government. In addition, to the extent such information exists, the EPA also should have the most recent several years of financial statements (with accompanying notes), balance sheets, audits, and other pertinent financial materials.

Prior to asserting any inability to pay claim, please note that in our analysis of any such claim, the EPA looks well beyond a

party's available cash reserves. For instance, at the very least, the government will consider numerous factors in determining a party's ability to pay including the sale of assets, increased commercial borrowing, sale of stock or securities, application of profits toward payment, and deferral or elimination of future investments, among others.

Thank you for your attention to this matter and I look forward to working with you in the months to come.

Sincerely yours,



Indira Balkissoon
Remedial Program Manager

Enclosures

cc: Stan Corneille, VTDEC
Hugh W. Martinez, EPA New England
Amy Rogers, EPA New England

ENCLOSURE A

List of Names and Addresses of PRPs to whom the General Notice Letter was sent on 11/1/94.

Elizabeth Coleman
President
Bennington College
Bennington, VT 05201

David Morgan
General Manager
Berkshire Clean-Way Rubbish
P.O. Box 253
Dalton, MA 01226

Donald L. Rushford
Vice Pres. & General Counsel
Central Vermont Public Service
77 Grove Street
Rutland, VT 05701

Ronald L. Pepin
Creative Products
11A Morse Drive
Essex Junction, VT 05452

Walter Noyes
President
H.M. Tuttle Company
113 Depot Street
Bennington, VT 05201

George E. Hadwen*
President
Hadwen, Inc.
RR 2 Box 2545
Charlotte, VT 05745-9613

Paul D. Merrill
President
Merrill Transport
100 Middle Street
P.O. Box 9729
Portland, ME 04104-5029

Jay Whitten
Vice President
Monument Industries
P.O. Box 617
Bennington, VT 05201-0617

Scott Halpert
Schmelzer Corporation
c/o MASCO Corporation
21001 Van Born Road
Taylor, MI 48180

Harvey Yorke
President
Southwestern Vermont Med. Ctr.
100 Hospital Drive East
Bennington, VT 05201

Ray Pearman
President
Triangle Wire and Cable, Inc.
10 Lincoln Center Boulevard
Lincoln, RI 02865

Raymond Prouty
President
U.S. Tsubaki, Inc.
119 Bowen Road
Bennington, VT 05201

Patrick J. Garahan
Secretary
Vermont Agency of Transp.
133 State Street
Montpelier, VT 05633-5001

James F. Comi
President
Heald Plastics
c/o Vermont Bag and Film, Inc.
P.O. Box 135
Bennington, VT 05201

John Wilson
President
Wilson Trucking
Barber Pond Road
Box 283 A
Pownal, VT 05261

* MOST CURRENT ADDRESS

ENCLOSURE B

List of Names and Addresses of PRPs to whom a General Notice Letter was sent to in March 1991.

Thomas Karazakis
President
ADD, INC.
Pennysaver Press
109 South Street
Bennington, VT 05201

Kenneth Olney
President
Arken Industries, Inc.
Morse Industrial Park
Bennington, VT 05201

Kelton Miller
President
Banner Publishing Corporation
425 Main Street
Bennington, VT 05201

M. Leonard Lewis
President
Ben-Mont Corporation
266 Beacon Street
Boston, MA 02116

Curtis L. Morin
President
Bennington Iron Works
Harmond Road
P.O. Box 798
Bennington, VT 05201

Richard H. Swenson
Bennington Potters, Inc.
324 County Street
P.O. Box 199
Bennington, VT 05201-0199

Bernard Bourgeois
Bernie's Trucking
113 Adams Street
Bennington, VT 05201

David Van Sickle
Vice President
BIJUR Lubricating Corp.
50 Kocher Drive
Bennington, VT 05201-1994

Mortimer Krane
Catamount Dyers
4 Margaret Lane
Bennington, VT 05201

Charles Tilgner, III
Chemical Fabrics Corp.
Daniel Webster Highway
P.O. Box 1137
Merrimack, NH 03054

Robert Church
Church Septic Tank Service
P.O. Box 1896, RR2
Bennington, VT 05201

Daniel Maneely
President
Courtnalds Structural
6 Shields Drive
P.O. Box 618
Bennington, VT 05201

Robert H. Pederchini
President
Environmental Action, Inc.
P.O. Box 589
North Adams, MA 01247

J.P. Mulcahy
CEO
Eveready Battery
Ralston Purina Company
One Checkerboard Square
St. Louis, MO 63164

Thomas J. Courtney
President
Johnson Controls, Inc.
P.O. Box 591
Milwaukee, WI 53210

William E. Lauzon
President
Lauzon Machine and Engine
757 Main Street
P.O. Box 406
Bennington, VT 05201

Werner H. Rodemer
President
Monument Plastics Machini
Bldg. 322 Nott St. Indust. Park
301 Nott Street
Schenectady, NY 12305

James F. Hardyman
President
(Ben-Mont Corporation)
c/o Textron, Inc.
40 Westminister Street
Providence, RI 02903

Stuart Hurd
Town Manager
Town of Bennington
205 South Street
Bennington, VT 05201

Sibley Mfg. Company
c/o Empire of Carolina, Inc.
Daniel Street Extension
P.O. Box 427
Tarboro, NC 27886

Jack Sweet
Chapel Road
Bennington, VT 05201

Thomas Sweet
91 Oakes Street
Bennington, VT 05201

G-C-D-C, Inc.
c/o John H. Williams, II
P.O. Box 35
115 Elm Street
Bennington, VT 05201

Edward Woodward, President
Vermont Tissue Paper Corp.
Route 67A
North Bennington, VT 05257

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

David Van Sickle
BLUR Lubricating Corp.
50 Kocher Drive
Bemington, VT 05201-1994

4a. Article Number

P 184 942 B31

4b. Service Type

- | | |
|---|---|
| <input type="checkbox"/> Registered | <input type="checkbox"/> Insured |
| <input checked="" type="checkbox"/> Certified | <input type="checkbox"/> COD |
| <input type="checkbox"/> Express Mail | <input type="checkbox"/> Return Receipt for Merchandise |

7. Date of Delivery

2-21-95

5. Signature (Addressee)**6. Signature (Agent)****8. Addressee's Address (Only if requested and fee is paid)**

UNITED STATES POSTAL SERVICE

Official Business



PENALTY FOR PRIVATE
USE TO AVOID PAYMENT
OF POSTAGE, \$300



Print your name, address and ZIP Code here

- MS. Indira Balmissoon
U.S. EPA Region I HPS-1
JFK Federal Building
Boston, MA 02203-2211

P 184 942 531



Receipt for Certified Mail

No Insurance Coverage Provided

David Van Sickle
BIJUR Lubricating Corp.
50 Kocher Drive
Bennington, VT 05201-1994

Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, and Addressee's Address	
TOTAL Postage & Fees	\$
Postmark or Date	

PS Form 3800, June 1991

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2. If you do not want this receipt postmarked, stick the gummed stub to the right of the return address of the article, date, detach and retain the receipt, and mail the article.
3. If you want a return receipt, write the certified mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends if space permits. Otherwise, affix to back of article. Endorse front of article **RETURN RECEIPT REQUESTED** adjacent to the number.
4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article.
5. Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check the applicable blocks in item 1 of Form 3811.
6. Save this receipt and present it if you make inquiry.

☆ U.S. GPO: 1991—302-916